

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

BRIAN HOLM,

Plaintiff,

vs.

CRYSTAL BEAVER, P.R. FOR THE
ESTATE OF BRIAN BEAVER, HER
HEIRS, EXECUTORS,
SUCCESSORS, AND ASSIGNS,

Defendants.

CV 18-00081-H-DLC-JTJ

FINDINGS AND RECOMMENDATIONS OF
UNITED STATES MAGISTRATE JUDGE

Plaintiff Brian Holm, a state prisoner proceeding without counsel, filed a diversity Complaint alleging Defendant breached a confidentiality clause within a settlement agreement. The Court considered whether Mr. Holm's Complaint was frivolous, malicious, fails to state a claim, or seeks solely monetary relief from a defendant who is immune pursuant to 28 U.S.C. §§ 1915(e)(2) and determined that dismissal was not appropriate. While the Court has the responsibility of having the Complaint properly served upon Defendant, it is Mr. Holm's obligation to provide accurate and sufficient information to effect service. *See Puett v. Blandford*, 912 F.2d 270, 275 (9th Cir. 1990); *Penton v. Pool*, 724 Fed.Appx. 546 (9th Cir. 2018); *Walker v. Sumner*, 14 F.3d 1415, 1422 (9th Cir. 1994)(*overruled*

on other grounds Sandin v. Conner, 515 U.S. 472, 483-84 (1995)); *see also* Fed. R. Civ. P. 4.

Mail sent to the address provided by Mr. Holm for service was returned as undeliverable. (Doc. 13.) Accordingly, on August 12, 2019, this Court issued Findings and Recommendations to dismiss this action for failure to serve pursuant to Fed.R.Civ.P. 4. (Doc. 14.) Mr. Holm, a state prisoner proceeding without counsel, filed timely objections indicating he had personally served Defendant with the Complaint and providing yet another address for Defendant. (Doc. 15.) In light of this information, the Court withdrew the August 12, 2019 Findings and Recommendations and issued an Order requiring Mr. Holm to file proof of service on or before September 13, 2019 or alternatively request the Court to send a request for waiver of service of summons to Ms. Beaver at the New Mexico address provided in his August 26, 2019 Objections. Mr. Holm did not respond.

Accordingly, IT IS HEREBY RECOMMENDED THAT this matter be DISMISSED WITHOUT PREJUDICE for failure to serve pursuant to Fed.R.Civ.P. 4.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS &
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

Mr. Holm may file objections to these Findings and Recommendations

within fourteen (14) days after service (mailing) hereof.¹ 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 4th day of October, 2019.

/s/ John Johnston

John Johnston
United States Magistrate Judge

¹Mr. Holm is entitled an additional three days after the fourteen day period would otherwise expire to file his objections.